

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH PATTON,

Petitioner,

vs.

STATE OF NEVADA, *et al.*,

Respondents.

2:12-cv-01437-JCM-GWF

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. By order filed January 31, 2013, the court ordered the original petition to be filed by the clerk and directed a response to the petition. (ECF No. 6). The petition was filed on that date. (ECF No. 7). Respondents filed a motion to dismiss on March 18, 2013. (ECF No. 9). On April 15, 2013, petitioner filed a motion to amend the petition, along with a proposed amended petition. (ECF Nos. 18 & 18-1). Respondents have filed a statement of non-opposition to petitioner's motion to file an amended petition. (ECF No. 20).

A party may amend his pleading once as a matter of course any time before a responsive pleading has been filed; otherwise, he may amend only by leave of court or by written consent of the adverse party. Fed. R. Civ. P. 15(a). Respondents filed a motion to dismiss before petitioner sought leave to amend, and that motion is not a responsive pleading. *Morrison v. Mahoney*, 399 F.3d 1042,

1 1045-47 (9th Cir. 2005). Accordingly, petitioner's motion to amend is granted, respondents' motion
2 to dismiss is denied without prejudice, and the court will set a new deadline for a response to the
3 amended petition, as set forth below.

4 **IT IS THEREFORE ORDERED** that petitioner's motion to file an amended petition (ECF
5 No. 18) is **GRANTED**. The clerk of court shall **FILE** the amended petition (ECF No. 18-1).

6 **IT IS FURTHER ORDERED** that respondents' motion to dismiss (ECF No. 9) is **DENIED**
7 **WITHOUT PREJUDICE** to renewing such arguments in response to the amended petition.

8 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry of
9 this order within which to answer, or otherwise respond to, the amended petition. In their answer or
10 other response, respondents shall address all claims presented in the amended petition. Respondents
11 shall raise all potential affirmative defenses in the initial responsive pleading, including lack of
12 exhaustion and procedural default. Successive motions to dismiss will not be entertained.

13 Dated this 30th day of April, 2013.

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16 UNITED STATES DISTRICT JUDGE
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